

This case has previously been before the Board on appeal. In its July 23, 2003 decision, the Board found that she had requested an oral hearing and reconsideration simultaneously and that the Office had erred by failing to grant her request for an oral hearing prior to issuing a

decision on the request for reconsideration.¹ The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

Following the Board's decision, the Branch of Hearings and Review issued a decision on December 31, 2003 and reversed the Office's decision denying appellant's claim, finding that she had met her burden of proof to establish a right knee meniscal tear causally related to her employment duties.²

Appellant requested a schedule award on April 20, 2004. In a report dated April 23, 2004, Dr. Frederick R. Young, a Board-certified orthopedic surgeon, noted that she underwent a magnetic resonance imaging (MRI) scan which demonstrated a probable tear of the medial meniscus. He stated that appellant had normal gait with no instability, no atrophy and that she had reached maximum medical improvement. Dr. Young stated that her subjective complaints included very mild, intermittent, occasional pain with no objective findings.

In a letter dated May 7, 2004, the Office requested that Dr. Young provide the extent of appellant's right knee impairment for schedule award purposes. The Office provided Dr. Young with a form to complete. He completed this form on May 24, 2004 and stated that appellant reached maximum medical improvement on April 12, 2004. Dr. Young indicated that no nerve root origin or specific nerve branches were affected, that she experienced mild pain or discomfort and that regarding weakness or atrophy, appellant demonstrated active movement against gravity with full resistance. He did not provide the narrative report requested by the Office which was to include loss of strength, affected muscle groups and if appropriate, atrophy and behavioral observations.

The Office medical adviser reviewed this report on July 5, 2004 and found that appellant was not entitled to an impairment rating for pain, normal gait and no atrophy. He also noted that no limitation of motion was documented and that she was not, therefore, entitled to an impairment rating for loss of range of motion. The Office medical adviser concluded that appellant had no ratable impairment.

By decision dated July 13, 2004, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence did not demonstrate a permanent measurable, scheduled impairment.

Appellant requested a review of the written record on August 13, 2004 and submitted excerpts from websites in support of her request.³ By decision dated November 17, 2004, the

¹ Docket No. 03-1404 (issued July 23, 2003). On September 20, 2002 appellant, who was then a 40-year-old rural carrier, filed an occupational disease claim for a leg and tendon injury as a result of driving a left-hand vehicle in the performance of duty.

² Appellant filed a separate claim as a result of an August 26, 2003 injury which the Office accepted for right knee strain, lumbar sprain and rib contusion.

³ Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the extent of appellant's permanent impairment for schedule award purposes, as such materials are of general application and are not determinative of the degree of impairment to appellant's scheduled member. *See Allen C. Hundley*, 53 ECAB 551, 554 (2002).

hearing representative affirmed the Office's July 13, 2004 decision denying appellant's request for a schedule award.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act⁴ and its implementing regulation⁵ sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Before the A.M.A., *Guides* can be utilized a description of appellant's impairment must be obtained from her physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁶

ANALYSIS

In this case, appellant's attending physician, Dr. Young, a Board-certified orthopedic surgeon, submitted a report dated April 23, 2004 and opined that she had reached maximum medical improvement. He stated that appellant had normal gait with no instability, no atrophy and that she had reached maximum medical improvement. Dr. Young stated that her subjective complaints included very mild, intermittent, occasional pain with no objective findings. He did not provide an impairment rating and did not correlate his findings with the A.M.A., *Guides*.

The Office requested a supplemental report from Dr. Young on May 7, 2004. He responded on May 24, 2004 and completed the form provided by the Office. Dr. Young indicated that appellant reached maximum medical improvement on April 12, 2004. He addressed her weakness or atrophy and found that she demonstrated active movement against gravity with full resistance. Dr. Young did not provide any specific nerve root or nerve branches which caused appellant's mild pain or discomfort. He did not provide the narrative report requested by the Office which was to include loss of strength, affected muscle groups and if appropriate, atrophy and behavioral observations.

⁴ 5 U.S.C. § 8107.

⁵ 20 C.F.R. § 10.404.

⁶ *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

The Office medical adviser reviewed Dr. Young's May 24, 2004 form report on July 5, 2004 and found that the report did not support that appellant was entitled to an impairment rating for pain, normal gait or atrophy. He also noted that Dr. Young did not indicate that she had any loss of range of motion due to her accepted condition of meniscal tear in the right knee. The Office medical adviser concluded that appellant had no ratable impairment.

The Board finds that Dr. Young did not provide a description of appellant's right knee impairment, including either the loss in degrees of active and passive motion of the affected member or function, any atrophy or deformity, any decrease in strength or disturbance of sensation or other pertinent descriptions of the impairment. He merely noted that she experienced very mild intermittent, occasional pain not supported by objective findings. Dr. Young's description was not in sufficient detail to insure that the claims examiner, Office medical adviser and the Board, in reviewing the file could clearly visualize appellant's impairment.⁷ Due to the lack of detailed physical findings and the lack of correlation of the limited finding of pain with the requirements of the A.M.A., *Guides*, the Board finds that the medical evidence is not sufficient to support appellant's claim for a schedule award.

CONCLUSION

The Board finds that appellant did not submit the necessary medical evidence to establish a permanent impairment due to her accepted knee condition in accordance with the A.M.A., *Guides*.

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 17 and July 13, 2004 are affirmed.

Issued: August 5, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board